In the Matter of AT&T ILEC's Petition for Declaratory Ruling that Sprint Nextel Corporation, its Affiliates, And Other Requesting Carriers may not Impose a Bill-and-Keep Arrangement or A Facility Pricing Arrangement Under The Commitments Approved by the Commission in Approving the AT&T- BellSouth Merger	)))))))))	WC Docket No. 08-23

Comments of Indiana Paging Network

Dated: February 25, 2008

Indiana Paging Network hereby submits its Comments to *AT&T ILEC's Petition for Declaratory Ruling That Sprint Nextel Corporation, Its Affiliates, And Other Requesting Carriers May Not Impose A Bill-and-Keep Arrangement Or A Facility Pricing Arrangement Under The Commitments Approved By The Commission In Approving The AT&T-BellSouth Merger* (WC Docket No. 08-23[1]) ("AT&T Petition") in the above captioned matter pursuant to sections 1.415 and 1.419 of the Commission's rules.

Bill-and-Keep Reciprocal Compensation and Facility Pricing Arrangements are not State-Specific Pricing Plans and are Subject To Porting Under Merger Commitment 7.1.

AT&T/BellSouth Merger Commitment ("Merger Commitment" or "Commitment") section 7.1[2] allows telecommunications carriers to port interconnection agreements from one AT&T state to another. The text of that Commitment provides (*id.*):

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[1] *See AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) (*AT&T/BellSouth Merger Order*); Order on Reconsideration, 22 FCC Rcd 6285 (2007)).

[2] *In re* AT&T Inc. and BellSouth Corp. Application for Transfer of Control, 22 FCC Rcd 5662,1222 (2007). Commitment 7.1 is among a group of commitments set forth under the bold-face heading "Reducing Transaction Costs Associated with Interconnection Agreements." Appendix F, at 149. Merger Commitment 7.1, although not specifically labeled as such, is item 1 in the seventh category.

The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

AT&T's references to "state-specific pricing" in interconnection agreements with telecommunications carriers has historically and lawfully been made with respect to state approved tariff rates or published rates for facilities and/or services that are specifically referenced as being available *via* agreement. However, contrary to AT&T's assertions in its request for a declaratory ruling, "state-specific pricing" in the Merger Commitments or in AT&T interconnection agreements does not refer to the negotiated or arbitrated terms and conditions of the agreement. By both the stated terms of Merger Commitment 7.1[3] and the terms of the Commission's "all or nothing" rule[4], the entire agreement is required to be ported. AT&T, by its petition in this matter, is unlawfully attempting to "pick and choose" portions of the agreement(s) to be ported.

AT&T's assertions that provisions such as "Bill-and-Keep" reciprocal compensation or facility pricing formulas do not "port" from one state to another under Merger Commitment 7.1 are not supported by the plain reading of the Merger Commitment 7.1 as quoted above. As noted by AT&T in its petition,[5] the provisions in the agreement to be ported to other states that are related to facility cost sharing and reciprocal compensation were negotiated or state commission ordered in reference to the entire agreement and/or other special considerations, and are one of the logical and practical reasons for carriers to request the porting of an entire agreement. Thus, in porting an agreement, the carriers are not burdened with having to negotiate and/or arbitrate the terms and conditions of a new agreement in every state. In particular, Bill-and-Keep reciprocal compensation is a negotiated provision for traffic exchange that cannot, by definition[6], be "state specific pricing". Bill-and-Keep reciprocal compensation is a

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[3] *Id.*

[4] See, "ALL-OR-NOTHING" RULE", In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338 (FCC 04-164 *Rel.* July 13, 2004).

[5] See, *AT&T Petition* at page 11.

[6] See, 47 C.F.R. § 51.713(a) Bill-and-keep arrangements for reciprocal compensation. "(a) For purposes of this subpart, bill-and-keep arrangements are

negotiated or state commission ordered method of interconnection between carriers that specifically eliminates the many problems associated with compensation arrangements between carriers.[7]

Additionally, an interconnection agreement that specifies a reciprocal compensation rate of zero or some greater amount is not, by practical application, "state specific pricing" since many interconnection agreements, including many AT&T agreements with multi-state carriers, specify a reciprocal compensation rate that is specified and used in many or all operating states of the carriers involved. These AT&T multi-state reciprocal compensation arrangements fly in the face of AT&T's petition claims of possible un-recovered costs of interconnection[8] if an agreement were ported from one state to another. Obviously AT&T has somehow managed to satisfactorily resolve the cost recovery issues in some fashion in its previous agreements, and its Commitments related obligations should be no different.

Furthermore, AT&T's pleadings regarding cost recovery with respect to the porting of Bill-and-Keep reciprocal compensation are disingenuous at best, since AT&T has, in its operating states, invoked the ISP Compensation Amendment[9] to its interconnection agreements that mandates Bill-and-Keep reciprocal compensation for all new interconnection arrangements. As a practical matter, regardless of the outcome of this proceeding, competitive carriers such as SprintNextel, operating under a state approved interconnection agreement, will be able to invoke the AT&T ISP Compensation Amendment including the Bill-and-Keep provisions of Section 2.4 of that Amendment.

With respect to a facility pricing arrangement, a facility use formula that allocates a percentage sharing arrangement between the parties to the agreement is a negotiated or ordered provision not related to "state-specific pricing." On the

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those in which neither of the two interconnecting carriers charges the other for the termination of local telecommunications traffic that originates on the other carrier's network."

[7] See, In the Matter of Developing a Unified Intercarrier Compensation Regime CC Docket No. 01-92, Rel. April 27, 2001 (FCC 01-132). And See also, Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68, Rel. April 27, 2001, ("FCC ISP Compensation Order") which was remanded but not vacated in WorldCom, Inc. v. FCC, No. 01-1218 (D.C. Cir. 2002).

[8] See, *AT&T ILECs Petition for Declaratory Ruling* at page 9.

[9] See, Wisconsin Example *AT&T AMENDMENT – RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC AND FEDERAL TELECOMMUNICATIONS ACT SECTION 251(B)(5) TRAFFIC (ADOPTING FCC'S INTERIM ISP TERMINATING COMPENSATION PLAN)* Section 2.4 Bill and Keep For ISP-bound Traffic in New Markets. Attached hereto as **Exhibit 1**.

other hand, the USOC pricing for the elements of a facility are state-specific. The Merger Commitments were obviously made to allow the porting of negotiated or state ordered sharing arrangements specifically with respect to "Reducing Transaction Costs Associated with Interconnection Agreements". For example, if an Ohio agreement specified or referenced a certain state tariff or published Universal Service Order Code (USOC) priced at $10.00 in Ohio, but tariffed or published at $5.00 in Indiana, then, if that agreement were "ported" from Ohio to Indiana, the price charged by AT&T for that USOC under the ported Indiana agreement would decrease from $10.00 to $5.00. Conversely, if the Ohio negotiated or arbitrated agreement provided that the carrier would pay a negotiated percentage (such as 10 percent) of the tariff rate for a specified facility, then that provision would port to Indiana the same as all of the other negotiated provisions of the Ohio agreement and the carrier would pay 10 percent of the state tariff price for a similar facility in Indiana.

AT&T's Contention that, "Merger Commitment 7.1 does not entitle a carrier to port an agreement to another state when it would be ineligible under Commission Rules to adopt that agreement in the same state"[10] is not true.

Merger Commitment 7.1, as quoted above, plainly has no limitation with respect to the Commissions Rules regarding eligibility of an agreement for porting or adoption. AT&T made a voluntary commitment as a condition of its 2006 merger with BellSouth, and had ample opportunity to place whatever limitations or specific exclusions it might feel necessary on each of its Commitments. AT&T cannot now *ex post facto* claim a limitation on a Commitment that clearly and plainly does not exist in the wording and plain reading of the Commitment. In formulating the agreement terms and conditions of a voluntary interconnection agreement, the parties to the agreement do not necessarily have to strictly adhere to the Commission's rules with respect to the obligations of the carriers to each other, where such obligations are properly the subject of arms-length negotiations.

AT&T's contention that, "Sprint Nextel seeks to port an interconnection agreement under circumstances that would result in a significant increase in costs to AT&T"[11] is merely unfounded speculation.

AT&T has not provided any cost studies or other documentation to substantiate its interconnection cost claims or even that its cost arguments are logical. As noted above, it is entirely possible, based on the practical circumstances of multi-state implementation, that the actual cost difference encountered in porting the requested interconnection agreement(s) from state to state are non-existent or would be de-minimus at best.

[10] See, *AT&T Petition* at page 13.
[11] *Id.* at page 15.

The AT&T claim regarding 47 C.F.R. 51.809(b)[12] obviously does not apply to Merger Commitment 7.1 because the Merger Commitments were made as a voluntary arrangement with full knowledge both of the Commission's Rules and the possibility that state-to-state porting of agreements could result in carrier-to-carrier obligations that are state approved, but not necessarily in conformance with the Commission's Rules related to carrier-to-carrier obligations.

CONCLUSION

For the reasons set forth above, the Commission should dismiss the AT&T ILECs' request for expedited resolution, and declare that:
(1) Bill-and-Keep arrangements for the transport and termination of telecommunications traffic and facility pricing arrangements are not "state-specific pricing" terms and are subject to porting under Merger Commitment 7.1 to other states;
(2) Merger Commitment 7.1 gives a carrier the right to port an agreement from one state to another, even if that carrier would be barred by Commission Rules implementing Section 252(i) of the Telecommunications Act of 1996 from adopting that agreement within the same state; and
(3) Merger Commitment 7.1 applies to in-state adoptions of interconnection agreements.

Respectfully submitted,

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[12] *Id.*, "Under section 51 .809(b) of the Commission's rules, a local exchange carrier is not obligated to make available to a requesting telecommunications carrier an interconnection agreement if the costs of providing that agreement to the requesting carrier exceed the costs of providing that agreement to the carrier with which it was originally negotiated."

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Exhibit 1

AMENDMENT TO
INTERCONNECTION AGREEMENT
BY AND BETWEEN
WISCONSIN BELL, INC. d/b/a SBC WISCONSIN
AND
AT&T WIRELESS SERVICES, INC.

Wisconsin Bell, Inc.[1] d/b/a SBC Wisconsin, as the Incumbent Local Exchange Carrier in Wisconsin, (hereafter, "ILEC") and AT&T Wireless Services, Inc. as a Competitive Local Exchange Carrier ("CLEC"), an Independent Local Exchange Carrier ("Independent") or Commercial Mobile Radio Service ("CMRS") provider in Wisconsin, (referred to as "CARRIER"), in order to amend, modify and supersede any affected provisions of their Interconnection Agreement with ILEC in Wisconsin ("Interconnection Agreement"), hereby execute this Reciprocal Compensation Amendment for ISP-Bound Traffic and Federal Telecommunications Act Section 251(b)(5) Traffic (Adopting FCC's Interim ISP Terminating Compensation Plan)("Amendment"). CLEC and Independent are referred to as "LEC."

1. Scope of Amendment

1.1 On or about May 9, 2003, ILEC made an offer to all carriers in the state of Wisconsin (the "Offer") to exchange traffic on and after June 1, 2003 under Section 251(b)(5) of the Act pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan of the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("FCC ISP Compensation Order") which was remanded but not vacated in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002).

1.2 The purpose of this Amendment is to include in CARRIER's Interconnection Agreement the rates, terms and conditions of the FCC's interim ISP terminating compensation plan for the exchange of ISP-bound traffic lawfully compensable under the FCC ISP Compensation Order ("ISP-bound Traffic") and traffic lawfully compensable under Section 251(b)(5) ("Section 251(b)(5) Traffic").

1.3 This Amendment is intended to supercede any and all contract sections, appendices, attachments, rate schedules, or other portions of the underlying Interconnection Agreement that set forth rates, terms and conditions for the terminating compensation for ISP-bound Traffic and Section 251(b)(5) Traffic exchanged between ILEC and CARRIER. Any inconsistencies between the provisions of this Amendment and provisions of the underlying Interconnection Agreement shall be governed by the provisions of this Amendment.

2. Rates, Terms and Conditions of FCC's Interim Terminating Compensation Plan for ISP-Bound Traffic and Section 251(b)(5) Traffic

2.1 ILEC and CARRIER hereby agree that the following rates, terms and conditions shall apply to all ISP-bound Traffic and all Section 251(b)(5) Traffic exchanged between the Parties on and after the date this Amendment becomes effective pursuant to Section 4.1 of this Amendment.

2.2 Descending Reciprocal Compensation Rate Schedule for ISP-bound Traffic and Section 251(b)(5) Traffic:

2.2.1 The rates, terms, conditions in this section apply only to the termination of ISP-bound Traffic and Section 251(b)(5) Traffic, and ISP-bound Traffic is subject to the growth caps and new local market restrictions stated in Sections 2.3 and 2.4 below. Notwithstanding anything contrary in this Amendment, the growth caps in Section 2.3 and the rebuttable presumption in Section 2.6 only apply to LECs.

[1] Wisconsin Bell, Inc. ("Wisconsin Bell"), a Wisconsin corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the States of Illinois, Indiana, Michigan, Ohio and Wisconsin. Wisconsin Bell offers telecommunications services and operates under the names "SBC Wisconsin" and "SBC Ameritech Wisconsin", pursuant to assumed name filings with the State of Wisconsin. Ameritech Corporation is a wholly owned subsidiary of SBC Communications, Inc.

2.2.2 The Parties agree to compensate each other for such ISP-bound Traffic and Section 251(b)(5) Traffic on a minute of use basis, according to the following rate schedule:

June 1, 2003 – June 14, 2003:	.0010 per minute
June 15, 2003 and thereafter:	.0007 per minute

2.2.3 Payment of Reciprocal Compensation will not vary according to whether the traffic is routed through a tandem switch or directly to an end office switch. Where the terminating party utilizes a hierarchical or two-tier switching network, the Parties agree that the payment of these rates in no way modifies, alters, or otherwise affects any requirements to establish Direct End Office Trunking, or otherwise avoids the applicable provisions of the Interconnection Agreement and industry standards for interconnection, trunking, Calling Party Number (CPN) signaling, call transport, and switch usage recordation.

2.3 ISP-bound Traffic Minutes Growth Cap

2.3.1 On a calendar year basis, as set forth below, LEC and ILEC agree to cap overall compensable Wisconsin ISP-bound Traffic minutes of use in the future based upon the 1st Quarter 2001 ISP-bound Traffic minutes for which LEC was entitled to compensation under its Wisconsin Interconnection Agreement(s) in existence for the 1st Quarter of 2001, on the following schedule.

Calendar Year 2001	1st Quarter 2001 compensable ISP-bound minutes, times 4, times 1.10
Calendar Year 2002	Year 2001 compensable ISP-bound minutes, times 1.10
Calendar Year 2003	Year 2002 compensable ISP-bound minutes
Calendar Year 2004 and on	Year 2002 compensable ISP-bound minutes

2.3.2 ISP-bound Traffic minutes that exceed the applied growth cap will be Bill and Keep. "Bill and Keep" refers to an arrangement in which neither of two interconnecting Parties charges the other for terminating traffic that originates on the other network; instead, each Party recovers from its end-users the cost of both originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party. .

2.4 Bill and Keep For ISP-bound Traffic in New Markets

2.4.1 In the event CARRIER and ILEC have not previously exchanged ISP-bound Traffic in any one or more Wisconsin LATAs prior to April 18, 2001, Bill and Keep will be the reciprocal compensation arrangement for all ISP-bound Traffic between CARRIER and ILEC for the remaining term of this Agreement in any such Wisconsin LATAs.

2.4.2 In the event CARRIER and ILEC have previously exchanged traffic in an Wisconsin LATA prior to April 18, 2001, the Parties agree that they shall only compensate each other for completing ISP-bound Traffic exchanged in that Wisconsin LATA, and that any ISP-bound Traffic in other Wisconsin LATAs shall be Bill and Keep for the remaining term of this Agreement.

2.4.3 Wherever Bill and Keep is the traffic termination arrangement between CARRIER and ILEC, both Parties shall segregate the Bill and Keep traffic from other compensable local traffic either (a) by excluding the Bill and Keep minutes of use from other compensable minutes of use in the monthly billing invoices, or (b) by any other means mutually agreed upon by the Parties.

2.5 The Growth Cap and New Market Bill and Keep arrangement applies only to ISP-bound Traffic, and does not include Transit traffic, Optional Calling Area traffic, IntraLATA Interexchange traffic, or InterLATA Interexchange traffic.

2.6 ISP-bound Traffic Rebuttable Presumption

In accordance with Paragraph 79 of the FCC's ISP Compensation Order, LECand ILEC agree that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic and ISP-bound Traffic exchanged between LECand ILEC exceeding a 3:1 terminating to originating ratio is presumed to be ISP-bound Traffic subject to the compensation and growth cap terms in this Section 2.0. Either party has the right to rebut the 3:1 ISP presumption by identifying the actual ISP-bound Traffic by any means mutually agreed by the Parties, or by any method approved by the applicable regulatory agency, including the Commission. If a Party seeking to rebut the presumption takes appropriate action at the Commission to rebut the presumption within sixty (60) days of receiving notice of ILEC's Offer and the Commission approves such rebuttal, then that rebuttal shall be retroactively applied to the date the Offer became effective. If a Party seeks to rebut the presumption after sixty (60) days of receiving notice of ILEC's Offer and the Commission approves such rebuttal, then that rebuttal shall be applied on a prospective basis as of the date of the Commission approval.

3. Reservation of Rights

3.1 ILEC and CARRIER agree that nothing in this Amendment is meant to affect or determine the appropriate treatment of Voice Over Internet Protocol (VOIP) traffic under this or future Interconnection Agreements. The Parties further agree that this Amendment shall not be construed against either party as a "meeting of the minds" that VOIP traffic is or is not local traffic subject to reciprocal compensation. By entering into the Amendment, both Parties reserve the right to advocate their respective positions before state or federal commissions whether in bilateral complaint dockets, arbitrations under Section 252 of the Act, commission established rulemaking dockets, or before any judicial or legislative body.

4. Miscellaneous

4.1 If this Amendment is requested by CARRIER prior to June 1, 2003 and CARRIER executes such and returns this Amendment to ILEC on or before the tenth (10th) business day after CARRIER has received an executable version of this Amendment, this Amendment will be effective as of June 1, 2003, subject to any necessary state commission approval; provided, however, the rates will not be implemented in ILEC's billing system until after any necessary state commission approval, at which time the rates billed by the Parties beginning on June 1, 2003 will be subject to a true-up. If this Amendment is not requested and returned within the parameters set forth in the previous sentence, this Amendment will become effective ten (10) days following the date such Amendment is approved or is deemed to have been approved by the applicable state commission.

4.2 This Amendment is coterminous with the underlying Interconnection Agreement and does not extend the term or change the termination provisions of the underlying Interconnection Agreement.

4.3 EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING INTERCONNECTION AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

4.4 Every rate, term and condition of this Amendment is legitimately related to the other rates, terms and conditions in this Amendment. Without limiting the general applicability of the foregoing, the change of law provisions of the underlying Interconnection Agreement, including but not limited to the "Intervening Law" or "Change of Law" or "Regulatory Change" section of the General Terms and Conditions of the Interconnection Agreement and as modified in this Amendment, are specifically agreed by the Parties to be legitimately related to, and inextricably intertwined with this the other rates, terms and conditions of this Amendment.

4.5 In entering into this Amendment, neither Party is waiving, and each Party hereby expressly reserves, any of the rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement with respect to any orders, decisions, legislation or proceedings and any remands thereof, including, without limitation, its rights under the United States Supreme Court's opinion in Verizon v. FCC, et al, 535 U.S. 467 (2002); the D.C. Circuit's decision in United States Telecom Association, et. al v. FCC, 290 F.3d 415 (D.C. Cir. 2002); the FCC's Triennial Review Order, adopted on February 20, 2003; the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002); and/or the Public Utilities Act of Illinois, which was amended on May 9, 2003 to add Sections 13-408 and 13-409, 220 ILCS 5/13-408 and 13-409, and enacted into law ("Illinois Law").

IN WITNESS WHEREOF, this Reciprocal Compensation Amendment for ISP-Bound Traffic and Federal Telecommunications Act Section 251(b)(5) Traffic (Adopting FCC Interim Terminating Compensation Plan) to the Interconnection Agreement was exchanged in triplicate on this ______ day of __________, 2003, by ILEC, signing by and through its duly authorized representative, and CARRIER, signing by and through its duly authorized representative

AT&T Wireless Services, Inc.	**Wisconsin Bell, Inc. d/b/a SBC Wisconsin by SBC Telecommunications, Inc., its authorized agent**
By: ______________________________	By: ______________________________
Name: ______________________________ (Print or Type)	Name: ______________________________ (Print or Type)
Title: ______________________________ (Print or Type)	Title: *For/* President – Industry Markets
Date: ____________________	Date: ____________________

FACILITIES-BASED OCN # __________

ACNA __________